

Agong or the Yang di-Pertuan Negara as the case may be. Furthermore they do not have any absolute right to pension and provision as to this is specifically made in the Pensions Ordinance, 1956. A reference to the case of *Terrell v. Secretary of State for the Colonies*,⁽⁸⁾ makes this quite clear.

It is no doubt true that article 135 of the Federal Constitution confers certain rights on civil servants but these relate to matters such as the manner in which or by whom they may be dismissed. They do not confer any right to office or to pension or any right not to be dismissed.

It should be noted that an allegation of a contravention of section 77 of the Ordinance is a grave matter. Section 79 provides that no prosecution shall be instituted except by, or at the instance of, or with the written consent of, the State Advocate-General: I am, in fact, being asked to hold that an employer has contravened this section, i.e., that I am satisfied beyond reasonable doubt that an employer is guilty of an offence under section 77 of the Ordinance without a prosecution or a trial of any kind. This proposition has only to be stated to be rejected as not only being palpably absurd but contrary to all principles of justice and common sense.

It follows, therefore, that the applicants have failed to surmount the preliminary hurdle of satisfying this court that the committee is purporting to act in contravention of section 77 of the Ordinance.

Since the Yang di-Pertuan Negara, as an act of grace, has classified certain categories of public servants to be employees for the purposes of the Ordinance so as to enable them to enter into negotiations with the Government as their employer with regard to improving their terms and conditions of service, it seems to me that it would be, in all the circumstances of this particular case, an extension of this benevolence for the authorities concerned to relax the stringent view which they appear to have taken of Mr. Teo Hock Kin's conduct.

These proceedings have brought to light facts which were not available to the permanent secretary (health)/director of medical services and the Public Service Commission and it is unlikely that any more evidence than that presented in affidavit form before me will become available to the committee. In view of the serious allegation that section 77 of the Ordinance has been contravened, although I have held otherwise, the administration and its adjuncts may well deem it advisable to take a course which will dispel any likely recriminations on the part of either the union or Mr. Teo Hock Kin that he is being victimised, even though he is not. The union and persons like

A Mr. Teo Hock Kin (who are officials thereof and at the same time public officers) should, however, bear in mind that the pursuit of legitimate trade union activities on the part of civil servants does not give them any licence to disregard the general law of the land or their obligations as members of the public service to abide by such rules and regulations as govern their conduct.

Subject to these observations, the application is dismissed with costs.

Application dismissed.

TEO KOW CHYE & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) July 21, 1965]

[Singapore — Magistrate's Appeal No. 138 of 1965]

Criminal Procedure — Joint charge of two accused persons — Nullity — Criminal Procedure Code (Cap. 132), s. 169.

The appellants were jointly charged and convicted for acting as bookmakers an offence under section 5 of the Betting Ordinance, 1960. It appeared that the appellants were found in the premises each with his own schedule and documents relating to horse betting.

Held: the appellants should have been charged and tried separately as they clearly were not accused of the same offence or of different offences committed in the same transaction. The mere fact that they were in the same premises when carrying on their alleged unlawful activities was not sufficient to bring them within the provisions of section 169 of the Criminal Procedure Code.

F MAGISTRATE'S CRIMINAL APPEAL.

S. K. Lee for the appellant.

Dalip Singh (Deputy Public Prosecutor) for the respondent.

G Wee Chong Jin C.J.: The short point taken in this appeal is that the appellants were wrongly charged and tried together and that the joint trial was accordingly illegal and a nullity.

H The facts were that a police party raided premises No. 269-B Outram Road on 5th July 1964 and arrested the appellants in the passage-way of the premises. The first appellant had with him a schedule relating to horse betting and documents also relating to horse betting denoting bets valued at \$1,570. The second appellant similarly had with him a schedule and documents valued at \$2,570.

I They were charged on one joint charge as follows:—

- "You 1. Teo Kow Chye & Teo Chuan Teck
2. Lum Ngow

are charged that you, on or about the 5th day of July, 1964, at about 4.55 p.m. at No. 269-B Outram Road, Singapore, did act as 'Book-makers' and thereby committed an offence under section 5(3)(a) of the Betting Ordinance, Ordinance 30/60 and punishable under section 5(3) of the said Ordinance."

They pleaded guilty and on conviction were sentenced to a term of four months imprisonment each.

Section 169 of the Criminal Procedure Code is the only section which permits more than one person to be charged and tried together and is in the following terms:—

"169. When more persons than one are accused of of the same offence or of different offences committed in the same transaction, or of more than one offence falling within the provisions of section 162 or when one person is accused of committing any offence and another of abetment of or attempt to commit such offence or when one person is accused of the offence of theft or extortion or criminal misappropriation or cheating, or criminal breach of trust, and another of receiving or retaining or assisting in the disposal or concealment of the subject matter of such offence they may be charged and tried together or separately as the court thinks fit and the provisions contained in the former part of this chapter shall apply to all such charges."

On the facts the appellants, each with his own schedule and documents relating to horse betting, should clearly have been charged separately and tried separately as they clearly were not "accused of the same offence or of different offences committed in the same transaction". The mere fact that they were in the same premises when carrying on their alleged unlawful activities is not sufficient to bring them within the provisions of section 169 of the Code.

The appeal must therefore be allowed and the convictions set aside and new trials ordered.

Appeal allowed.

WONG JUAT ENG v. THEN THAW EU & ANOR.

[F.C. (Wylie C.J. (Borneo), Suffian and Gill JJ.)
July 23, 1965]

[Kuching — Federal Court Civil Appeal No. 37 of 1965]

Landlord and tenant — Memorandum of sublease — Covenant against assignment without consent in writing — Waiver — Oral permission to sublet — Notice of termination.

Evidence — Parole evidence — Admissibility of.

The respondents' predecessor let certain premises for a term of 15 years to the appellant and her co-tenants under a memorandum of sublease, which contained a covenant that the sublessees were not to assign or sublet the demised premises or any part thereof without the consent in writing of the sublessor. The appellant had sublet rooms on the premises but she alleged that she had obtained verbal permission from the then owner. The respondents gave a month's notice of termination of the sublease and brought an action for possession of the premises. In the courts below (*supra* p. 103) it was held that the evidence of the verbal permission was not admissible and that therefore the subletting was in breach of the terms of the lease.

Held: (1) parole evidence is admissible as evidence of waiver and therefore in this case as the sublessor had waived compliance by the sublessee with the strict terms of the covenant and the latter had acted to her detriment in proceeding with the transactions otherwise than in

A strict compliance with the covenant, equity will not permit the sublessor to exercise his right to forfeiture based on those transactions;

(2) the sublease could not be terminated by a month's notice and therefore the sublease was not validly terminated and the respondents were not entitled to an order for possession in this case.

B *Cases referred to:—*

(1) *Central London Property Trust Ltd. v. High Trees House Ltd.* [1947] K.B. 130.

(2) *Hughes v. Metropolitan Railway Co.* (1877), 2 App. Cas. 439.

(3) *Arivaputhira Padavachi v. Muthukumaraswamy Padavachi* A.I.R. 1914 Mad. 489.

C (4) *Jhabba Singh v. Chhajjoo* A.I.R. 1926 All. 445.

(5) *Robertson v. Minister of Pensions* [1949] 1 K.B. 227 at p. 231.

FEDERAL COURT.

Wylie C.J. (Borneo): This appeal arises from proceedings commenced in the district court at Kuching by the respondents against the appellant claiming possession of certain premises of which the appellant was alleged to be the sole tenant. The respondents claimed to be entitled to an order for possession under paragraphs (b) and (j) of section 15(1) of the Rent Control Ordinance, i.e. on the ground that there had been a breach of obligation on the part of the appellant and on the further ground that the appellant was receiving from subtenants rents exceeding seventy-five per cent of the rent paid by her. These premises were leased by the then registered proprietor of the land to the appellant and three other people for a term of fifteen years from 1st January, 1958, at a rent of \$70 a month. A memorandum of sublease was executed and registered in accordance with the provisions of the Land Code, the registered proprietor's interest in land under that code being a leasehold interest. The owner died in 1963 and the respondents are the present owners. On the pleadings, it is common ground that the appellant is now the only tenant, but it is not clear how her co-tenants have been divested of their interest in the sublease. The appellant has parted with possession of parts of the premises both on the ground floor and upstairs to occupants who are either subtenants or licensees.

The memorandum of sublease contained the following covenant on the part of the sublessees:—

"Not to assign or sublet the demised premises or any part thereof without the consent in writing of the sublessor."

I There was, however, a covenant on the part of the sublessor —

"To permit the sublessees to grant licence to any person to use any part or parts of the upper floor of the demised premises at any time during the said term of this sublease".

As the sublessees' covenant refers only to